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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,828	04/26/2007	Klaus-Dieter Haag	095309.58064US	2362
23911 7590 02/13/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
GOODEN JR, BARRY J				
ART UNIT		PAPER NUMBER		
3616				
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02/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/587,828

**Applicant(s)**

HAAG ET AL.

**Examiner**

BARRY J. GOODEN JR

**Art Unit**

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2007 (Preliminary Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 7/28/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13, 22 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13, "the sensor being embodied as a capacitive sensor" renders the claims indefinite, as it is unclear whether the sensor is a capacitive sensor or some other undefined type of sensor. Examiner suggests removing "embodied as" from the claim.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 10, 11, 14, 15, 18-20, 23, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omura, US Patent 5,398,185, in view of Rayford, US Patent 6,000,717.

In regards to claims 10, 11, 14, 15, 18-20, 23, 26 and 28, Omura discloses all of the claimed elements including a driver restraining system in a motor vehicle, comprising:

an airbag (5) which is integrated into a steering device (53); and  
a control unit (9) whose input signals comprise a signal of a crash detection sensor system (69) and a signal of a passenger compartment (39,49) which has at least one seat position detector and a sensor system (63,65,67) for sensing morphological data of a driver of the vehicle;

wherein, in the event of a crash, positioning of the steering device (57) and a triggering decision about unfolding of the airbag and an unfolding characteristic of the airbag are determined by the control unit (Reference is made to Column 7, lines 48-55);  
and

wherein, in the event of a crash, the control unit actuates a belt pretensioning device (Reference is made to Column 7, lines 41-43);

wherein the passenger compartment sensor system has a sensor for sensing a distance of the driver from a steering wheel of the steering device (Column 6, lines 25-31).

In regards to claims 10, 11, 14, 15, 18-20, 23, 26 and 28, Omura discloses all of the claimed elements excluding a weight sensor in the driver's seat and a motor-operated seat adjustment device.

Rayford discloses a sensor system for sensing morphological data of the driver having at least one weight sensor (70), which is integrated into the driver's seat and which is a component of a seat occupation detector (Reference is made to Column 3, lines 34-37);

in the event of a crash, a control unit adaptively actuates a motor-operated seat adjustment device of a driver's seat;

wherein, in the event of a crash, the motor-operated seat adjustment device sets a vertical position and an axial position of seat elements, including a seat lower part, a backrest and a headrest, as a function of signals of the control unit (Reference is made to Column 3, lines 5-33).

It would have been obvious to have modified Omura in view of Rayford to include a weight sensor in the driver's seat, since it is old and well known to check a seat for an occupant before activating an airbag for said seat.

It would have been obvious to one of ordinary skill in the art at the time of invention to have provided the apparatus of Omura with a motor-operated seat adjustment device as taught by Rayford so as to control the manner in which the air bag engages an occupant of a seat as it is desirable for increased protection (Reference is made to Column 3, lines 5-45).

6. Claims 12, 13, 16, 17, 21, 22, 24, 25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omura in view of Rayford as applied to claims 10 and 15 above, and further in view of Breed et al., US Publication 2004/0129478.

Breed et al. discloses a sensor system for sensing morphological data of the driver having at least one sensor (353,354,355) which determines a size of the driver and which senses a position of the driver's head (Reference is made to Paragraph 1617, 1704);

wherein the sensor for determining the position of the driver's head is arranged in the region of the inner roof lining of a vehicle or of a headrest, the sensor being a capacitive sensor (Reference is made to Paragraph 0359, 0363, 1616 and 1617);

wherein the sensor for sensing the distance of the driver from the steering wheel is arranged on an exit flap of the airbag (Reference is made to Figure 13, Paragraphs 0359, 0363 and 1143);

wherein the sensor for sensing the distance of the driver from the steering wheel comprises a capacitive sensor (Reference is made to Paragraphs 0359 and 0363).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the apparatus as taught by Omura in view of Rayford further in view of the sensors as taught by Breed et al. so as to provide an accurate determination of the occupant location and morphology, thus providing optimal head protection by preventing contact with the airbag cover (Reference is made to Paragraph 1143) and further enabling smart airbag deployment (Reference is made to Paragraph 1588).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARRY J. GOODEN JR whose telephone number is (571)272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen can be reached on (571) 272-6952. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Q. Nguyen/  
Supervisory Patent Examiner, Art Unit 3616

Barry J Gooden Jr.  
Examiner  
Art Unit 3616

BJG